

HR Weekly Podcast

8/1/2007

Today is August 22, 2007, and welcome to the HR Weekly Podcast from the State Office of Human Resources. This week's topic relates to the new regulations issued by the Department of Homeland Security, or DHS, concerning No-Match Letters.

When information submitted by employers on W-2 forms results in some mismatch between the employee name and social security number, the Social Security Administration sends a letter that is known as a "no-match" letter. For example, clerical errors, unreported name changes, or social security number misuse may cause mismatches. The Social Security Administration sends the no-match letters to employees and employers (if the employer has more than 10 no-matches) in an attempt to correct the information. In South Carolina last year, the Social Security Administration issued 1,775 no-match letters.

Previously, employers did not have clear guidelines on appropriate action to take after receiving a no-match letter and often ignored the letters. As part of an effort to increase enforcement of existing federal immigration laws, DHS announced on August 10th new procedural changes regarding how employers in the United States should handle no-match letters. The final rules say that, by virtue of an employer receiving a no-match letter, the employer has "constructive knowledge" that the employee may not have appropriate work authorization. If the employer does not take corrective action within 90 days or ignores the no-match letter, the employer is violating federal immigration law. DHS is also increasing the civil fines by 25% for employers who knowingly employ illegal immigrants. The final rules also create a safe harbor from fines and penalties for employers who make a good faith effort to correct mismatches. The new rules will take effect on September 14, 2007.

The new rules also allow employers 30 days to examine their own records to see if the mismatch can be corrected. If so, the employer must notify the Social Security Administration with the corrected information. If employers, however, cannot correct the mismatch from their records, they must provide notice to the employee. The employee has 90 days from the employer's receipt of the no-match letter to correct the mismatch. If the discrepancy has not been resolved within 90 days of the employer's receipt of the notice, the employer must re-verify the employee's work authorization by completing a new I-9 form within three days. For this new I-9 form, the employee cannot submit the document that is the result of the mismatch as proof of work authorization. The employer should retain both I-9 forms for the employee. If the employee cannot meet the I-9 requirements, the employer must terminate the employee. If the employee, however, resolves the mismatch, they should not be terminated. Employers should also be reminded that receiving a no-match letter should not automatically result in terminating employees. Employers may still be liable for discrimination claims if they unjustly terminate an employee without following these rules.

While the new rules take effect on September 14, 2007, employers will not be impacted until next spring when new no-match letters will be sent out.

If you have questions about the new rules, you may contact your HR consultant at 737-0900. OHR will also include in the text version of this podcast on our website links to some other helpful websites.

Thank you.

Overview of Social Security Employer No-Match Letters Process

<https://www.socialsecurity.gov/legislation/nomatch2.htm>

Final Rule published in Federal Register on 8/15/07

<http://a257.g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/pdf/E7-16066.pdf>

Safe Harbor Information Center http://faq.ice.gov/cgi-bin/ice_faq.cfg/php/enduser/std_alp.php?p_sid=6lbfqOli

Department of Homeland Security Announces Final Rule Regarding SSA Mismatch Letters - Aug 10

http://www.laborlawyers.com/files/14737_Homeland%20Security_SSA%20Mismatch%20Letters.pdf

New Regulations Issued Regarding Social Security No-Match Letters - Aug 10

<http://www.ogletreedeakins.com/publications/index.cfm?Fuseaction=PubDetail&publicationid=195>

DHS Publishes Final "Safe-Harbor" Procedures for Employers Who Receive SSA "No-Match" Letters and DHS Notices

[http://www.littler.com/presspublications/index.cfm?event=pubItem&pubItemID=17086&childViewID=249&type=all\\$ion=Press%20&%20Publications&subject=ASAPs&title=DHS%20Publishes%20Final](http://www.littler.com/presspublications/index.cfm?event=pubItem&pubItemID=17086&childViewID=249&type=all$ion=Press%20&%20Publications&subject=ASAPs&title=DHS%20Publishes%20Final)